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June 24, 1997

Paper No. 15
TJQ

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Autometric, Incorporated

Serial No. 74/480,683

Jim Zeeger for applicant.

Esther A. Belenker, Senior Trademark Attorney, Law Office
103 (Kathryn Erskine, Managing Attorney).

Before Simms, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Autometric,
Incorporated to register the mark ZOOM 500/SC for
"stereoscope components, namely, modular attachment for
image processing and exploration including computer software
embedded therein."¹

The Senior Trademark Attorney has refused registration
under Section 2(d) of the Act on the ground that applicant's

¹Application Serial No. 74/480,683, filed January 19, 1994,
alleging dates of first use of January 20, 1992. The word
"zoom" is disclaimed apart from the mark.

mark, when applied to applicant's goods, so resembles the previously registered mark ZOOM 500 for "stereoscopes, light tables for film transparency viewing and accessories, namely eyepieces and objectives" as to be likely to cause confusion.

When the refusal was made final, applicant appealed.² Applicant and the Senior Trademark Attorney have filed briefs.

Applicant essentially argues that the term "zoom" lacks distinctiveness as applied to the goods of registrant and applicant, and that the marks, when considered in their entirety as applied to different goods, are not likely to cause confusion. In support of its arguments, applicant submitted a dictionary listing for the term "zoom", as well as eight third-party registrations of marks which include "zoom" as a part thereof.³ Applicant further maintains that the goods are bought by sophisticated purchasers.

²The Senior Trademark Attorney also issued a final refusal on the basis that the specimens were unacceptable because they are promotional materials that did not show trademark use, and on the basis that applicant had failed to indicate the meaning of "500 SC" or "SC." In her appeal brief, the Senior Trademark Attorney withdrew these final refusals. More specifically, the Senior Trademark Attorney noted applicant's explanation that the specimens are point of sale materials which are distributed with the goods; she also noted that the specimens show a picture of the goods in close proximity to the mark, and include information necessary to order the goods. The Senior Trademark Attorney further accepted applicant's statement that "SC" means "soft copy."

³During the prosecution phase applicant submitted printouts of twenty-one third-party registrations retrieved from what appears to be the USPTO's CD-ROM on registered trademarks. With its appeal brief applicant filed photocopies of eight of the third-party registrations. The Senior Trademark Attorney, in her

The Senior Trademark Attorney contends that the marks are similar and that the goods are closely related such that confusion is likely to occur even among sophisticated purchasers. The Senior Trademark Attorney submitted, with her appeal brief, a dictionary definition of "stereoscope", of which we take judicial notice: "An optical instrument used to impart a three-dimensional effect to two photographs of the same scene taken at slightly different angles and viewed through two eyepieces."

A determination of likelihood of confusion requires an analysis of the relevant factors listed in *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d) of the Act, two key considerations are the similarities between the marks and the similarities between the goods.

With respect to the similarity between the goods, applicant does not seriously dispute this factor. Indeed, there is a close relationship between registrant's stereoscopes and applicant's stereoscope components. The stereoscopes and components therefor are assumed to move in the same channels of trade to the same classes of purchasers.

brief, has considered this evidence to be of record, discussing the probative value of it.

The submission of third-party registration evidence by way of a printout from the USPTO's CD-ROM is sufficient to make the evidence of record. In view thereof, we have considered all of the third-party registrations made of record by applicant in reaching our conclusion.

We also find that the marks ZOOM 500 and ZOOM 500/SC are similar. Applicant has adopted the entirety of registrant's mark and merely added the letters "SC" to it. And, as disclosed by applicant, these letters mean "soft copy". This terminology, as shown by applicant's specimens ("For image analysts who want the best of both worlds...hardcopy and softcopy...in one system."), would appear to be descriptive as applied to stereoscopes. Thus, purchasers familiar with registrant's ZOOM 500 stereoscopes might well believe that applicant's ZOOM 500/SC stereoscope components originate from the same source; that is, that applicant's goods are components sold by registrant to enhance the softcopy capability of registrant's stereoscopes. Simply put, the marks in their entireties sound alike, look alike, and have similar connotations as applied to the goods of registrant and applicant.

The third-party registrations do not compel a different result. We acknowledge the dictionary definition of the term "zoom" and the descriptiveness/suggestiveness of the term "zoom" for these types of goods. As often stated, however, the registrations do not show the extent of actual use of the registered marks or of the familiarity of the relevant purchasing public with them. *Smith Brothers Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 462-463 (CCPA 1973). In any event, we note that none of the registrations is for stereoscopes.

We recognize applicant's point that purchasers of registrant's and applicant's goods are sophisticated. However, even sophisticated purchasers are not immune from source confusion. We find this to be especially the case here where the marks are so similar and the goods are closely related.

To the extent that any of the points raised by applicant cast doubt on our decision, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

We conclude that purchasers familiar with registrant's stereoscopes and related goods sold under the mark ZOOM 500 would be likely to believe, upon encountering applicant's mark ZOOM 500/SC for stereoscope components, namely, modular attachment for image processing and exploration including computer software embedded therein, that the goods originated with or are somehow associated with or sponsored by the same source.

Ser No. 74/480,683

Decision: The refusal to register is affirmed.

R. L. Simms

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges
Trademark Trial and Appeal Board

Ser No. 74/480,683